

BellSouth Telecommunications, Inc.
601 W. Chestnut Street
Room 407
Louisville, KY 40203

Dorothy.Chambers@BellSouth.com

Dorothy J. Chambers
General Counsel/Kentucky

502 582 8219
Fax 502 582 1573

July 19, 2004

Ms. Beth O'Donnell
Executive Director
Public Service Commission
211 Sower Boulevard
P.O. Box 615
Frankfort, KY 40602

RECEIVED

JUL 19 2004

PUBLIC SERVICE
COMMISSION

RE: In the Matter of: Petition of DIECA Communications, Inc., d/b/a
Covad Communications Company for Arbitration of Interconnection
Agreement Amendment with BellSouth Telecommunications, Inc.,
Pursuant to Section 252(b) of the Telecommunications Act of 1966
KPSC Case No. 2004-00259

Dear Ms. O'Donnell:

Enclosed for filing in the above-captioned case are the original and ten (10) paper copies of BellSouth's Response to the Petition for Arbitration filed by DIECA Communications, Inc., d/b/a/ Covad Communications. Exhibit A to the Response is a redlined version of Attachment 2 to the parties' Agreement and is filed on a CD. Eleven CDs containing Exhibit A are provided to the Commission. The Issues Matrix is attached to the Response as Exhibit B. BellSouth includes as Exhibit C to the Response the actual amendment to the agreement that BellSouth requests the Commission adopt and approve as the appropriate resolution of the change of law dispute between the parties. A copy of the entire filing is served on the individuals listed on the Certificate of Service.

Very truly yours,



Dorothy J. Chambers

Enclosures

cc: Parties of Record

544435

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

RECEIVED

JUL 19 2004

PUBLIC SERVICE
COMMISSION

Petition of DIECA Communications, Inc., d/b/a)
Covad Communications Company)
for Arbitration of Interconnection Agreement) Case No. 2004-00259
Amendment with BellSouth Telecommunications, Inc.)
Pursuant to Section 252(b) of the)
Telecommunications Act of 1996)

BELLSOUTH TELECOMMUNICATIONS, INC.'S
RESPONSE TO PETITION

INTRODUCTION

BellSouth Telecommunications, Inc. (“BellSouth”), responds to the Petition for Arbitration (“Petition”) filed by DIECA Communications, Inc., d/b/a Covad Communications Company (“Covad”)¹ and states as follows:

Covad’s petition, while styled as an arbitration proceeding, is more accurately described as a dispute arising from a change of law and should be converted accordingly. At issue are those changes resulting from the August 21, 2003 *Triennial Review Order*² issued by the Federal

¹ Communications regarding BellSouth’s Response to this Petition should be directed to:

Dorothy J. Chambers
601 West Chestnut, Room 407
Room 402
Louisville, KY 40203
Dorothy.Chambers@bellsouth.com
(502) 582-8219

R. Douglas Lackey
Meredith E. Mays
BellSouth Center – Suite 4300
675 West Peachtree Street, N.E.
Atlanta, Georgia 30375
Meredith.Mays@bellsouth.com
(404) 335-0750

² Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, 18 FCC Rcd 16978 (2003) (“*Triennial Review Order*” or “TRO”), *reversed in part on other grounds, United States Telecom. Ass’n v. FCC*, Nos. 00-1012, *et al.* (D.C. Cir. Mar. 2, 2004) (“*USTA II*”).

Communications Commission (“FCC”). In the *Triennial Review Order* the FCC decided that line sharing is no longer an unbundled network element that incumbent LECs are required to offer pursuant to Section 251 of the Act. *Triennial Review Order*, ¶ 260. The FCC adopted a transitional mechanism for both new and existing line sharing arrangements (*Triennial Review Order* ¶¶ 264-269), the terms of which BellSouth seeks to incorporate as an amendment to the current Interconnection Agreement (“Agreement”) between it and Covad, which expires on December 19, 2004. Despite the clear language contained within the *Triennial Review Order* concerning line sharing, which language was not impacted by *USTA II*, Covad has filed a petition in which it invites the Commission to completely ignore the line sharing transitional mechanism. The Commission should reject Covad’s invitation.

BACKGROUND

The Agreement between BellSouth and Covad is a regionwide agreement effective in the states of Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, and Tennessee.³ On or about October 16, 2003, BellSouth provided Covad with written notice that a change of law had occurred pursuant to the terms of the parties’ agreement. On December 4, 2003, BellSouth provided Covad with its proposed amendment to incorporate changes to the parties’ agreement reflecting the *TRO* (“*TRO Amendment*”). In response to Covad’s request that BellSouth provide its proposed amendment in redline format, on February 9, 2004, BellSouth provided Covad with a highlighted version of its Amendment in order to clearly designate the changes necessary to reflect the *TRO*. On February 10, 2004, Covad notified BellSouth that it would provide a redline to BellSouth’s amendment “shortly,” although it never did so.

³ The Agreement expires on December 19, 2004, and the parties have begun the process of negotiating a replacement interconnection agreement. In addition, on July 1, 2004, BellSouth provided Covad with written notice of a change of law as well as its proposed language arising from the *USTA II* decision

Instead, on April 16, 2004, after the issuance of the *USTA II* decision, Covad responded to the *TRO Amendment* by providing its proposed language concerning line sharing only. Covad did not respond with any other proposed changes to any other aspect of the *TRO Amendment*, but instead filed its petition on June 23, 2004. Covad filed a similar petition with the North Carolina Utilities Commission on June 24, 2004, which included the prefiled testimony of William H. Weber. Mr. Weber's prefiled testimony in North Carolina stated that Covad "rejected" BellSouth's *TRO Amendment*.

While Covad's petition is styled as a "Petition for Arbitration", it results from the application of the "change of law" provisions in parties' Agreement, and is not an arbitration petition within the meaning of 47 U.S.C. § 252. Covad effectively concedes as much by referring to Sections 12 and 16 of the Agreement in its Petition. BellSouth does not object to Covad invoking the terms of Sections 12 and 16 of the Parties' Agreement, however, such dispute resolution provisions do not transform this matter into an arbitration proceeding under Section 252.

Covad also suggests this Commission need only address line sharing in this proceeding. While BellSouth believes that the *Triennial Review Order* clearly sets forth the manner in which it is obligated to provide line sharing and thus there is really nothing for the Commission to address with respect to this issue, Covad's suggestion conveniently ignores other aspects of the *Triennial Review Order*. There are other aspects of the *Triennial Review Order* that were not reversed by *USTA II* that must be incorporated into parties' Agreement and that should be resolved as part of this proceeding. Consequently, BellSouth includes additional matters for resolution in this proceeding. These additional modifications to the current Agreement arise solely from the *Triennial Review Order*, and were not impacted by *USTA II*. For ease of

reference, BellSouth includes as Exhibit “A” a redlined version of Attachment 2 to the parties’ Agreement, which shows only the *Triennial Review Order* changes.⁴ Exhibit A includes modifications that were previously sent to Covad as part of BellSouth’s *TRO Amendment* on December 8, 2003 and that were also included in the highlighted *TRO Amendment* provided to Covad on February 9, 2004. Exhibit A has been modified from the *TRO Amendment* provided to Covad so that it reflects solely those changes arising from the *Triennial Review Order* that were not impacted by the *USTA II* decision.

Covad provided BellSouth with counter-language to the line-sharing aspect of BellSouth’s *TRO Amendment* proposal only, and, as stated above, included in testimony that accompanied its North Carolina petition that it had “rejected” BellSouth’s proposed *TRO Amendment*. BellSouth includes as Exhibit “B” a revised issues matrix, which includes the line sharing issue that Covad raised in its petition as well as other issues, all of which arise from the *Triennial Review Order*. Consistent with Mr. Weber’s North Carolina testimony, BellSouth has indicated Covad’s rejection of BellSouth’s proposed language. Exhibit “B” includes a cross-reference to the relevant portion of Exhibit A as well as citations to the applicable portions of the *Triennial Review Order*. BellSouth also includes as Exhibit “C” the actual amendment to the Agreement that BellSouth requests the Commission adopt and approve as the appropriate resolution of the change of law dispute between the parties.

SPECIFIC RESPONSES

BellSouth responds below to each of the separately numbered paragraphs of the Petition:

⁴ Because BellSouth has very recently provided Covad with its proposed changes necessitated by *USTA II*, it is not seeking dispute resolution of any modifications arising from *USTA II* at this time.

1. The allegations in Paragraph 1 of the Petition require no response from BellSouth. To the extent a response would be appropriate, BellSouth lacks sufficient information to form a belief as to the truth of the matter asserted and would, therefore, deny the allegations in Paragraph 1 of the Petition.

2. BellSouth admits the allegations in Paragraph 2 of the Petition.

JURISDICTION

3. BellSouth states that the relevant provisions of the parties' Agreement, the 1996 Act, and Kentucky law speak for themselves and require no response from BellSouth. BellSouth admits that its proposed *TRO Amendment* included the transitional mechanism for line sharing arrangements, including pricing, articulated by the FCC in the *Triennial Review Order* and set forth in 47 C.F.R. § 51.319(a)(1)(i). BellSouth admits that Covad provided BellSouth with a counter-proposal on April 16, 2004, accompanied by a letter in which Covad recognized that any discussion between the parties concerning access to line sharing on a commercial basis arose during the course of "independent negotiations". Such independent negotiations are not properly the subject of a dispute resolution proceeding with this Commission. BellSouth denies any remaining allegations in Paragraph 3.

4. BellSouth states that the relevant provisions of the parties' Agreement speak for themselves and require no response from BellSouth. BellSouth admits that Covad can petition this Commission to resolve disputes, but denies that the specific relief that Covad seeks is within the subject matter jurisdiction of this Commission. BellSouth further states that this Commission can and should resolve this matter by ordering the parties' to amend the Agreement to reflect all aspects of the *TRO* that were not impacted by *USTA II*.

STANDARD OF REVIEW

5. BellSouth denies that Covad has filed an arbitration petition pursuant to Section 252 of the 1996 Act and further denies that this Commission has subject matter jurisdiction to enforce the provisions of Sections 201, 202, and 271 of the 1996 Act. BellSouth admits that the effective rules adopted by the FCC, specifically 47 C.F.R. § 51.319(a)(1)(i) should resolve this dispute.

ISSUES IN DISPUTE

6. BellSouth's December 4, 2003 *TRO Amendment* speaks for itself and requires no response from BellSouth. BellSouth admits that, after it sent Covad its *TRO Amendment*, and then sent Covad a highlighted version of its *TRO Amendment*, that Covad only proposed counter-language concerning line sharing. Line sharing, however, was not the only issue that was not reversed or vacated by the *USTA II* decision; therefore, this Commission should resolve all changes necessitated by the *Triennial Review Order* that were not reversed or vacated by *USTA II* in this proceeding. BellSouth includes with this response Exhibits A, B, and C, which, respectively, properly reflect all necessary *Triennial Review Order* changes to the Parties' Agreement, all disputed issues between the parties with cross-references to Exhibit A and citations to the applicable portions of the *Triennial Review Order*, and the amendment that this Commission should order the parties to execute to resolve this dispute.

7. Covad's Attachment C speaks for itself and requires no response from BellSouth. BellSouth denies that Attachment C reflects all disputed issues and directs the Commission to BellSouth's Exhibit B.

REQUESTED RELIEF

The matters raised in this proceeding are legal issues that can and should be addressed through the submission of briefs on an expedited basis. As to those issues over which the Commission has subject matter jurisdiction, such issues should be resolved in accordance with §§ 251 and 252 of the 1996 Act. This Commission lacks subject matter jurisdiction to enforce the provisions of Sections 201, 202, and 271 of the 1996 Act and should summarily reject Covad's attempt to circumvent the line sharing rulings of the *Triennial Review Order*. BellSouth states further that on July 1, 2004, it filed an Emergency Petition for Declaratory Ruling and Preemption of State Action with the FCC in which it referred to Covad's petition and in which it requested the FCC declare that state commission have no jurisdiction over the rates, terms, and conditions of elements provided by RBOCs to CLECs pursuant to Section 271.⁵ This Commission should adopt BellSouth's position on each issue identified herein and require the Parties to amend the Agreement to incorporate the changes proposed by BellSouth. BellSouth denies the relief requested by Covad and states that the Commission should reject Covad's positions on each and every one of the issues set forth herein and, instead, adopt BellSouth's positions.

BellSouth denies each and every allegation in the Petition not expressly admitted herein, and demands strict proof thereof.

⁵ BellSouth is not suggesting that line sharing is a 271 requirement. On the contrary, line sharing is not required by Section 271. In other proceedings, this Commission and other state commissions within BellSouth's region have not addressed whether BellSouth has an independent obligation to provide line sharing, nor is this an issue properly before state commissions given BellSouth's pending FCC petition. See Order on Reconsideration, Docket No. 7892 (March 24, 2004); also Order Denying Motion to Modify SEEM Plan, Alabama Public Service Commission, Docket No. 25835 (Feb. 13, 2004); Order No. PSC-04-0511-PAA-TP, Florida Public Service Commission Docket No. 000121A-TP (May 19, 2004); Order on Reconsideration, North Carolina Utilities Commission Docket No. P-100, Sub 133k (July 13, 2004).

Respectfully submitted, this 19th day of July 2004.

BELLSOUTH TELECOMMUNICATIONS, INC.

A handwritten signature in black ink, appearing to read "Dorothy J. Chambers", written over a horizontal line.

Dorothy J. Chambers
601 West Chestnut
Room 407
Louisville, KY 40203
(502) 582-8219

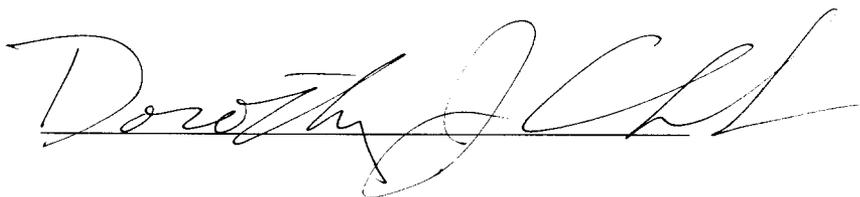
R. Douglas Lackey
Meredith E. Mays
675 West Peachtree Street, N.E., Ste. 4300
Atlanta, Georgia 30375
(404) 335-0750

CERTIFICATE OF SERVICE

This is to certify that on this 19th day of July, 2004, I served a copy of the within and foregoing, upon known parties of record, via electronic mail as follows:

C. Kent Hatfield
Douglas F. Brent
Stoll, Kennon & Park, LLP
2650 AEGON Center
400 West Market Street
Louisville, KY 40202
502 568-9100
brent@skp.com
(Counsel for Covad)

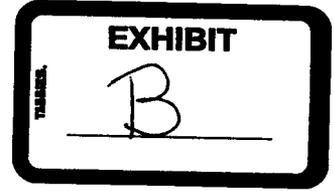
Charles E. (Gene) Watkins, Esquire
Covad Communications Company
1230 Peachtree Street, N.E.
19th Floor, Promenade II
Atlanta, GA 30309
g Watkins@covad.com
(404) 942-3492 o; (404) 942-3495 f

A handwritten signature in cursive script, appearing to read "Dorothy J. Clark", written over a horizontal line.

544115

EXHIBIT B

Issue Number	Positions of the Parties	BellSouth's Proposed Amendments
1. Line Sharing	<p>Covad: Because BellSouth is obliged to provide access to line sharing under 47 U.S.C. § 271, Covad proposes the same access requirements set forth in the Parties current IA, with modifications to the pricing consistent with the FCC's TRO guidance. BellSouth's proposed TRO amendment improperly relies on the transitional pricing set forth by the FCC under its 201 and 202 authority and fails to address line sharing ordering after October 2004. However, the just and reasonable standard under 201 and 202, and not the FCC's transitional pricing, applies to the access requirements for line sharing under Section 271. Because BellSouth is obliged to offer line sharing under Section 271, the proper 201 and 202 pricing is the just and reasonable rate, not the transitional rate identified by the FCC. In most instances, the just and reasonable rate will be lower than the rates proposed by BellSouth in its December 4, 2003 IA amendment. Because the access requirements have not changed, Covad is not proposing any change to the existing IA regarding access to line sharing apart from the introduction language in Attachment 2.</p> <p>BellSouth: Covad's petition results directly from the FCC's Triennial Review Order ("TRO") and resulting rules. As a result the petition constitutes a dispute arising under the change of law provisions in the Parties' Agreement rather than an</p>	<p>Attachment 2, Section 2.11.1. Insert a reference to revised line sharing rates before Exhibit C and include the rate revisions specified in the TRO and applicable federal rules.</p> <p>Attachment 2, Section 2.11.4. Delete subsection 2.11.4.1 and replace with new subsections 2.11.4.1 – 2.11.4.3.</p> <p>Attachment 2, Section 2.11.4. Delete the sentence from the subsections formerly numbered as 2.11.4.2 referring to the interim rates in Exhibit C and renumber subsection to conform with inserted language.</p>



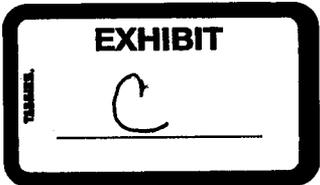
	<p>arbitration petition within the meaning of 47 U.S.C. § 252. The applicable federal rules outline the method of providing access to line sharing at 47 C.F.R. § 51.319(a)(1)(i), which language BellSouth has sought to incorporate into the parties' Agreement. Rather than adopting language consistent with the applicable rules, Covad seeks to circumvent the rules, by incorrectly claiming BellSouth has an obligation under 47 U.S.C. § 271 to provide line sharing. Even if BellSouth had such an obligation, and if, the appropriate standard for determining the rates for such an obligation is that the rates must be "just and reasonable" under 47 U.S.C. §§ 201 and 202, only the FCC would have jurisdiction to review such rates.</p>	
<p>2. Sub-Loop Concentration and Feeder</p>	<p>Covad's Position: Covad rejected BellSouth's proposed language and has not proposed any alternate language.</p> <p>BellSouth's Position: The FCC modified the unbundling requirements for sub-loops, limiting incumbent subloop unbundling obligations to distribution loop plant. (TRO, ¶ 254). Consequently, the Agreement should not contain additional subloop unbundling requirements.</p>	<p>Attachment 2, Section 2.6. Delete subsections 2.6.2.2, 2.6.6, and 2.6.2.4.</p>
<p>3. Packet Switching</p>	<p>Covad's Position: Covad rejected BellSouth's proposed language and has not proposed any alternate language.</p> <p>BellSouth's Position: The FCC found that carriers are not impaired without access to packet switching, including routers and DSLAMS. (TRO, ¶ 537; 47 C.F.R. § 51.319(a)(2)(i)). The FCC also</p>	<p>Attachment 2, Section 2.1. Add subsection 2.1.2.1.</p> <p>Attachment 2. Delete Section 3.5.</p>

	<p>eliminated the limited exception to packet-switching unbundling. (TRO, ¶ 537). Thus, the Agreement should be modified to delete the language that included packet switching and should also include language that states loops do not include packet switched features, functions or capabilities.</p>	
<p>4. Call Related Databases</p>	<p>Covad's Position: Covad rejected BellSouth's proposed language and has not proposed any alternate language.</p> <p>BellSouth's Position: BellSouth is not required to provide Covad with access to its call related databases. (TRO, ¶ 551; see also 552-556, 560; 47 C.F.R. § 51.319(d)(4)(i)(B). The Agreement should be modified to delete call related databases.</p>	<p>Attachment 2. Delete Section 10.1 – 10.6.</p>
<p>5. Commingling of Services</p>	<p>Covad's Position: Covad rejected BellSouth's proposed language and has not proposed any alternate language.</p> <p>BellSouth's Position: The TRO contains specific language concerning the commingling of UNEs and combinations of UNEs with services offered pursuant to tariff. BellSouth has proposed new language at Section 1.9 that tracks the language within the TRO. BellSouth's proposed language at subsection 1.9.1 reflects the language within the TRO at ¶ 579. BellSouth's proposed language at subsections 1.9.1 and 1.9.2 reflects language within the TRO at ¶ 579. BellSouth's proposed language at subsection 1.9.3 reflects language within the TRO at ¶ 580. BellSouth's proposed language at subsection 1.9.4 is consistent with the</p>	<p>Attachment 2. Add Section 1.9, including subsections 1.9.1 – 1.9.4.</p>

	payment arrangement contained within the TRO at ¶ 582, n. 1796.	
6. Greenfield Areas	<p>Covad's Position: Covad rejected BellSouth's proposed language and has not proposed any alternate language.</p> <p>BellSouth's Position: The TRO provides that "Incumbent LECs do not have to offer unbundled access to newly deployed or 'greenfield' fiber loops" (TRO ¶ 273; also 47 C.F.R. § 51.319(a)(3)(i)), which finding is reflected in BellSouth's proposed language.</p>	Attachment 2, Section 2.1. Add subsection 2.1.2.
7. Fiber to the Home Facilities	<p>Covad's Position: Covad rejected BellSouth's proposed language and has not proposed any alternate language.</p> <p>BellSouth's Position: The FCC addressed fiber to the home facilities in the TRO at ¶ 277 and in its related rules at 47 C.F.R. § 51.319(a)(3). BellSouth's proposed language incorporates the FCC's findings and rules.</p>	Attachment 2, Section 2.1. Add subsections 2.1.3 and 2.1.4.
8. Hybrid Loops	<p>Covad's Position: Covad rejected BellSouth's proposed language and has not proposed any alternate language.</p> <p>BellSouth's Position: The FCC has set forth narrowly tailored unbundling for hybrid loops that are used to provide broadband services in the TRO at ¶ 289-290 and in its rules at 47 C.F.R. § 51.319(a)(2)(ii). BellSouth's proposed language is consistent with the FCC's directives.</p>	Attachment 2, Section 2.1. Add subsection 2.1.2.5.

<p>9. Loop Termination</p>	<p>Covad's Position: Covad rejected BellSouth's proposed language and has not proposed any alternate language.</p> <p>BellSouth's Position: The rules adopted pursuant to the TRO define the local loop network element as a "transmission facility between a distribution frame (or its equivalent) in an incumbent LEC central office and the loop demarcation point at an end-user customer's premises." 47 C.F.R. § 51.319(a). Facilities that terminate at a mobile, cellular telephone do not fall within this definition. BellSouth's proposed language recognizes that "loops" by definition cannot be used to provide wireless telecommunications services.</p>	<p>Attachment 2, Section 2.1. Add subsection 2.1.2.6.</p>
<p>10. Unbundled Copper Loop – Long ("UCL-L")</p>	<p>Covad's Position: Covad rejected BellSouth's proposed language and has not proposed any alternate language.</p> <p>BellSouth's Position: Within BellSouth's network and pursuant to industry standards all copper loops longer than 18kft have load coils. Without these load coils, voice and narrowband telecommunications services will not work properly on copper-only loops. The only way an Unbundled Copper Loop - Long (over 18kft) can be provisioned, is to use Line Conditioning to remove those load coils. At ¶ 643 of the TRO, the FCC clarified that Line Conditioning is "properly seen as a routine network modification that incumbent LEC's regularly perform in order to provide xDSL services to their own customers". BellSouth does not remove load coils on copper loops</p>	<p>Attachment 2, Section 2.1. Delete subsection 2.1.17.5.</p>

	<p>longer than 18kft for its own customers. Therefore, line conditioning relating to UCL-L cannot be classified as a routine network modification. If BellSouth were to offer UCL-L loops in the post-TRO world, it would be providing a superior network to the CLECs. The TRO makes clear that BellSouth is not required to provide such a superior network to the CLECs.</p> <p>In addition, Covad has previously participated in an industry collaborative that adopted line sharing and line conditioning standards within BellSouth. In that collaborative Covad agreed that the removal of load coils on copper loops longer than 18kft was not appropriate. Consequently, BellSouth's proposed language properly deletes language relating to the UCL-L.</p>	
--	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--



**Amendment to the Agreement
Between
DIECA Communications, Inc. dba Covad Communications Company
and
BellSouth Telecommunications, Inc.
Dated December 19, 2001**

Pursuant to this Amendment, (the "Amendment"), DIECA Communications, Inc. dba Covad Communications Company (Covad), and BellSouth Telecommunications, Inc. ("BellSouth"), hereinafter referred to collectively as the "Parties," hereby agree to amend that certain Interconnection Agreement between the Parties dated December 19, 2001 ("Agreement") to be effective thirty (30) calendar days after the date of the last signature executing the Amendment.

WHEREAS, BellSouth and Covad entered into the Agreement on December 19, 2001, and;

NOW THEREFORE, in consideration of the mutual provisions contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby covenant and agree as follows:

1. The Parties agree to delete rates, terms and conditions for the following Sections from Attachment 2, Network Elements and Other Services.

Section	Section Name
2.1.17.5	UCL/long: Unbundled Copper Loop/long (UCL/long)
2.6.2.2	Unbundled Sub-Loop Concentration/Multiplexing Functionality
2.6.2.4	Unbundled Sub-Loop Feeder
2.6.6	Unbundled Sub-Loop Concentration System (USLC)
3.5	Packet Switching Capability
10.1-10.6	Operator Call Processing, Inward Operator Services and Directory Assistance Services

2. The Parties agree to add Section 1.9 to Attachment 2, Network Elements and Other Services, as follows:

1.9 Commingling of Services

1.9.1 Commingling means the connecting, attaching, or otherwise linking of a Network Element, or a Network Element combination, to one or more telecommunications services or facilities that Covad has obtained at wholesale from BellSouth, or the combining of a Network Element or Network Element combination with one or more such wholesale telecommunications services or facilities.

- 1.9.2 Subject to the limitations set forth elsewhere in this Attachment, BellSouth shall not deny access to a Network Element or a combination of Network Elements on the grounds that one or more of the elements:
 - 1) is connected to, attached to, linked to, or combined with such a facility or service obtained from BellSouth; or 2) shares part of BellSouth's network with access services or inputs for non-qualifying services.
 - 1.9.3 BellSouth will not "ratchet" a commingled circuit. Unless otherwise agreed to by the Parties, the Network Element portion of such circuit will be billed at the rates set forth in this Agreement and the remainder of the circuit or service will be billed in accordance with BellSouth's tariffed rates.
 - 1.9.4 When multiplexing equipment is attached to a commingled circuit, the multiplexing equipment will be billed from the same jurisdictional authorization (agreement or tariff) as the higher level of service and the Central Office Channel Interfaces will be billed from the same jurisdictional authorization (agreement or tariff) as the lower level of service.
3. The Parties agree to add Sections 2.1.2.1-2.1.2.6 to Attachment 2, Network Elements and Other Services, as follows:
- 2.1.2.1 The Loop does not include any packet switched features, functions or capabilities.
 - 2.1.2.2 In new build (Greenfield) areas, where BellSouth has only deployed Fiber To The Home (FTTH) facilities, BellSouth is under no obligation to provide Loops.
 - 2.1.2.3 In FTTH overbuild situations where BellSouth also has copper Loops, BellSouth will make those copper Loops available to Covad on an unbundled basis, until such time as BellSouth chooses to retire those copper Loops using the FCC's network disclosure requirements. In these cases, BellSouth will offer a 64kbps second voice grade channel over its FTTH facilities.
 - 2.1.2.4 Furthermore, in FTTH overbuild areas, BellSouth is not obligated to ensure that copper Loops in that area are capable of transmitting signals prior to receiving a request for access to such Loops by Covad. If a request is received by BellSouth for a copper Loop, BellSouth will restore the copper Loop to serviceable condition if technically feasible. In these instances of Loop orders in an FTTH overbuild area, BellSouth's standard Loop provisioning interval will not apply, and the order will be handled on a project basis by which the Parties will negotiate the applicable provisioning interval.
 - 2.1.2.5 For hybrid loops, where Covad seeks access to a hybrid loop for the provision of broadband services, BellSouth shall provide Covad with nondiscriminatory access to the time division multiplexing features, functions and capabilities of that hybrid loop, including DS1 or DS3, on

an unbundled basis to establish a complete transmission path between BellSouth's central office and an End User's customer premises.

- 2.1.2.6 Covad may not purchase Loops or convert Special Access circuits to Loops if such Loops will be used to provide wireless telecommunications services.
4. The Parties agree to insert the language "revised line sharing rates" in Section 2.11, subsection 2.11.1 immediately prior to the existing reference to Exhibit C. The parties further agree that the attached rates constitute the revised line sharing rates.
5. The parties agree to delete subsection 2.11.4.1 in Section 2.11.4, and replace it with the following language:
 - 2.11.4.1 Line Sharing arrangements in service as of October 1, 2003, will be grandfathered until the earlier of the date the End User discontinues or moves service with Covad. Grandfathered arrangements pursuant to this Section will be billed at the revised line sharing rates set forth in Exhibit C.
 - 2.11.4.2 For the period from October 2, 2003, through October 1, 2004, Covad may request new Line Sharing arrangements. For Line Sharing arrangements placed in service between October 2, 2003, and October 1, 2004, the rates will be as set forth in the revised line sharing rates in Exhibit C. After October 1, 2004, Covad may not request new Line Sharing arrangements under the terms of this Agreement.
 - 2.11.4.3 The rates set forth herein will be applied retroactively back to the date set forth in the Triennial Review Order.
 - 2.11.4.4 As of the earlier of October 2, 2006, or the date that the End User discontinues or moves service with Covad, all Line Sharing arrangements shall be terminated.
6. The Parties agree to delete the following sentence from Section 2.11.4, subsection 2.11.4.2: "The interim rates set forth in Exhibit C were adopted as a result of compromise between the parties and do not reflect either party's position as to final rates for access to High Frequency Spectrum."
7. All of the other provisions of the Agreement, dated December 19, 2001, shall remain in full force and effect.
8. Either or both of the Parties are authorized to submit this Amendment to the respective state regulatory authorities for approval subject to Section 252(e) of the Federal Telecommunications Act of 1996.

